

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00949-TNM**

TOSH et al v. U.S. CENTERS FOR MEDICARE AND
MEDICAID SERVICES et al

Assigned to: Judge Trevor N. McFadden

Case: 1:18-cv-00915-TSC

Cause: 05:552 Freedom of Information Act

Plaintiff

ERNEST C. TOSH

Date Filed: 04/23/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

represented by **Patrick John Curran , Jr.**
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Plaintiff

DAVID T. MARKS

represented by **Patrick John Curran , Jr.**
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V.

Defendant

**U.S. CENTERS FOR MEDICARE
AND MEDICAID SERVICES**

represented by **Christopher Charles Hair**
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TERMINATED: 02/15/2019

Defendant

**U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES**

represented by **Christopher Charles Hair**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Damon William Taaffe
(See above for address)
TERMINATED: 02/15/2019

Date Filed	#	Docket Text
04/23/2018	<u>1</u>	COMPLAINT against U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Filing fee \$ 400 receipt number 0090-5437906) filed by ERNEST C. TOSH, DAVID T. MARKS. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Civil Cover Sheet)(Curran, Patrick) (Entered: 04/23/2018)
04/24/2018		Case Assigned to Judge Trevor N. McFadden. (zsb) (Entered: 04/24/2018)
04/24/2018		SUMMONS Not Issued as to U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. Attorney, and U.S. Attorney General (zsb) (Entered: 04/24/2018)
04/24/2018	<u>2</u>	STANDING ORDER Establishing Procedures for Cases Before Judge Trevor N. McFadden. The parties are hereby ORDERED to read and comply with the directives in the attached standing order. Signed by Judge Trevor N. McFadden on 4/24/2018. (lctnm3) (Entered: 04/24/2018)
04/24/2018	<u>3</u>	REQUEST FOR SUMMONS TO ISSUE re <u>1</u> Complaint, filed by ERNEST C. TOSH, DAVID T. MARKS. Related document: <u>1</u> Complaint, filed by ERNEST C. TOSH, DAVID T. MARKS.(Curran, Patrick) (Entered: 04/24/2018)
04/25/2018	<u>4</u>	SUMMONS (4) Issued Electronically as to U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. Attorney and U.S. Attorney General (td) (Entered: 04/25/2018)
05/02/2018	<u>5</u>	ERRATA <i>Civil Cover Sheet</i> by DAVID T. MARKS, ERNEST C. TOSH. (Attachments: # <u>1</u> Notice of Related Case)(Curran, Patrick) (Entered: 05/02/2018)
05/07/2018	<u>6</u>	NOTICE of Appearance by Damon William Taaffe on behalf of All Defendants (Taaffe, Damon) (Entered: 05/07/2018)
05/21/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 05/07/2018. (Curran, Patrick) (Entered: 05/21/2018)
05/21/2018	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 5/7/2018. Answer due for ALL FEDERAL DEFENDANTS by 6/6/2018. (Curran, Patrick) (Entered: 05/21/2018)
05/21/2018	<u>9</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES served on 4/30/2018 (Curran, Patrick) (Entered: 05/21/2018)
05/21/2018	<u>10</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES served on 5/4/2018 (Curran, Patrick) (Entered: 05/21/2018)
05/24/2018	<u>11</u>	MOTION for Extension of Time to File Answer re <u>1</u> Complaint, by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Taaffe, Damon) (Entered: 05/24/2018)
05/25/2018	<u>12</u>	ERRATA <i>Notifying Court of Plaintiff's Consent to Motion</i> by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES <u>11</u> MOTION for Extension of Time to File Answer re <u>1</u> Complaint, filed by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Taaffe, Damon) (Entered: 05/25/2018)
05/29/2018		MINUTE ORDER granting Defendants' <u>11</u> Motion for Extension of Time. Per <u>12</u> , Plaintiffs consent to the motion. Defendants' response to the Complaint shall now be due before or on June 11, 2018. Signed by Judge Trevor N. McFadden on 5/25/2018. (lctnm3) (Entered: 05/29/2018)

05/29/2018		Set/Reset Deadlines: Defendants' response to the Complaint due by 6/11/2018. (hmc) (Entered: 05/29/2018)
06/11/2018	<u>13</u>	ANSWER to Complaint by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.(Taaffe, Damon) (Entered: 06/11/2018)
06/12/2018		MINUTE ORDER. Before the Court are a complaint and an answer in this FOIA case. It is hereby ORDERED that the parties shall meet and confer and file a Joint Status Report proposing a schedule for proceeding in this matter. The schedule should address, among other things, the status of Plaintiff's FOIA request, the anticipated number of documents responsive to Plaintiff's FOIA request, the anticipated date(s) for release of the documents requested by Plaintiff, whether a motion for an <i>Open America</i> stay is likely in this case, whether a <i>Vaughn</i> index will be required in this case, and a briefing schedule for dispositive motions, if required. The parties shall file the schedule on or before July 6, 2018. Signed by Judge Trevor N. McFadden on 6/12/2018. (lctnm3) (Entered: 06/12/2018)
06/12/2018		Set/Reset Deadlines: Joint Status Report due by 7/6/2018. (tg) (Entered: 06/12/2018)
07/05/2018	<u>14</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Taaffe, Damon) (Entered: 07/05/2018)
07/05/2018		MINUTE ORDER. Upon consideration of the parties' <u>14</u> Joint Meet and Confer, it is hereby ORDERED that the parties shall, before or on July 23, 2018, file a joint status report advising the Court on the progress of the parties' discussions and proposing, as necessary, a date for the parties' next joint status report or a briefing schedule for dispositive motions. Signed by Judge Trevor N. McFadden on 7/5/2018. (lctnm3) (Entered: 07/05/2018)
07/06/2018		Set/Reset Deadlines: Joint Status Report due by 7/23/2018. (tg) (Entered: 07/06/2018)
07/23/2018	<u>15</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Taaffe, Damon) (Entered: 07/23/2018)
07/24/2018		MINUTE ORDER. Upon consideration of the parties' <u>15</u> Joint Status Report, the parties are directed to submit, on or before August 22, 2018, an update to the Court regarding the status of the parties' efforts to resolve the claims at issue in this case. Signed by Judge Trevor N. McFadden on 7/24/2018. (lctnm3) (Entered: 07/24/2018)
07/24/2018		Set/Reset Deadlines: Joint Status Report due by 8/22/2018. (hmc) (Entered: 07/24/2018)
08/23/2018	<u>16</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Taaffe, Damon) (Entered: 08/23/2018)
08/27/2018		MINUTE ORDER: Upon consideration of the parties' <u>16</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further update on or before September 24, 2018, reporting on the status of settlement discussions. Signed by Judge Trevor N. McFadden on 8/27/2018. (lctnm3) (Entered: 08/27/2018)
08/27/2018		Set/Reset Deadlines: A further Joint Status Report is due by 9/24/2018. (hmc) (Entered: 08/27/2018)
09/21/2018	<u>17</u>	Joint STATUS REPORT by DAVID T. MARKS, ERNEST C. TOSH. (Attachments: # <u>1</u> Text of Proposed Order)(Curran, Patrick) (Entered: 09/21/2018)
09/24/2018		MINUTE ORDER: Upon consideration of the parties' <u>17</u> Joint Status Report, it is hereby ORDERED that a further update shall be filed on or before November 23, 2018. Signed by Judge Trevor N. McFadden on 9/24/2018. (lctnm3) (Entered: 09/24/2018)
09/24/2018		Set/Reset Deadlines: Joint Status Report due by 11/23/2018. (hmc) (Entered: 09/24/2018)

11/20/2018	<u>18</u>	Joint STATUS REPORT by DAVID T. MARKS, ERNEST C. TOSH. (Curran, Patrick) (Entered: 11/20/2018)
11/21/2018		MINUTE ORDER: Upon consideration of the parties' <u>18</u> Joint Status Report, it is hereby ORDERED that a further updated shall be filed on or before January 19, 2019. This report shall provide an update on the ongoing settlement negotiations. Signed by Judge Trevor N. McFadden on 11/21/2018. (lctnm3) (Entered: 11/21/2018)
11/21/2018		Set/Reset Deadlines: Joint Status Report due by 1/19/2019. (hmc) (Entered: 11/21/2018)
01/18/2019	<u>19</u>	Joint STATUS REPORT by DAVID T. MARKS, ERNEST C. TOSH. (Attachments: # <u>1</u> Text of Proposed Order)(Curran, Patrick) (Entered: 01/18/2019)
01/22/2019		MINUTE ORDER: Upon consideration of the parties' <u>19</u> Joint Status Report, it is hereby ORDERED that a further report shall be filed on or before March 22, 2019. This report shall update the Court about the status of the ongoing settlement negotiations. Signed by Judge Trevor N. McFadden on 1/22/2019. (lctnm3) (Entered: 01/22/2019)
01/22/2019		Set/Reset Deadlines: Status Report due by 3/22/2019. (tg) (Entered: 01/22/2019)
02/15/2019	<u>20</u>	NOTICE OF SUBSTITUTION OF COUNSEL by Christopher Charles Hair on behalf of All Defendants (Hair, Christopher) (Entered: 02/15/2019)
03/22/2019	<u>21</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Hair, Christopher) (Entered: 03/22/2019)
03/25/2019		MINUTE ORDER: Upon consideration of the parties' <u>21</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further report on or before May 21, 2019. This report shall update the Court on the status of settlement discussions and propose a schedule for further proceedings as necessary. Signed by Judge Trevor N. McFadden on 3/25/2019. (lctnm3) (Entered: 03/25/2019)
03/25/2019		Set/Reset Deadlines: Joint Status Report due by 5/21/2019. (hmc) (Entered: 03/25/2019)
05/21/2019	<u>22</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Hair, Christopher) (Entered: 05/21/2019)
05/22/2019		MINUTE ORDER: Upon consideration of the parties' <u>22</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further update on or before July 22, 2019. This report shall apprise the Court of the status of the expert's data review and the ongoing settlement negotiations. It shall also propose a schedule for further proceedings as necessary. Signed by Judge Trevor N. McFadden on 5/22/2019. (lctnm3) (Entered: 05/22/2019)
05/22/2019		Set/Reset Deadlines: Joint Status Report due by 7/22/2019. (hmc) (Entered: 05/22/2019)
07/22/2019	<u>23</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Hair, Christopher) (Entered: 07/22/2019)
07/23/2019		MINUTE ORDER: Upon consideration of the parties' <u>23</u> Joint Status Report, it is hereby ORDERED that the parties shall file a further update on or before September 20, 2019. This report shall apprise the Court of the status of the expert's data review and the ongoing settlement negotiations. It shall also propose a schedule for further proceedings as necessary. Signed by Judge Trevor N. McFadden on 7/23/2019. (lctnm3) (Entered: 07/23/2019)
07/23/2019		Set/Reset Deadlines: Joint Status Report due by 9/20/2019. (hmc) (Entered: 07/23/2019)
09/20/2019	<u>24</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Hair, Christopher) (Entered: 09/20/2019)

09/23/2019		MINUTE ORDER. Upon consideration of the parties' <u>24</u> Joint Status Report, it is hereby ordered that the parties shall file another Joint Status Report no later than November 19, 2019. The report shall inform the Court about the status of the expert's review, any outstanding disagreements between the parties, and a proposed schedule going forward. SO ORDERED. Signed by Judge Trevor N. McFadden on 9/23/2019. (lctnm3) (Entered: 09/23/2019)
09/24/2019		Set/Reset Deadlines: Joint Status Report due by 11/19/2019. (hmc) (Entered: 09/24/2019)
11/19/2019	<u>25</u>	Joint STATUS REPORT by U.S. CENTERS FOR MEDICARE AND MEDICAID SERVICES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Hair, Christopher) (Entered: 11/19/2019)
11/20/2019		MINUTE ORDER. Upon consideration of the parties' <u>24</u> Joint Status Report, it is hereby ordered that the parties shall file another Joint Status Report no later than January 17, 2020. The report shall inform the Court about the status of the CMS Director's review, any outstanding disagreements between the parties, and a proposed schedule going forward. SO ORDERED. Signed by Judge Trevor N. McFadden on 11/20/2019. (lctnm3) (Entered: 11/20/2019)
11/20/2019		Set/Reset Deadlines: Joint Status Report due by 1/17/2020. (hmc) (Entered: 11/20/2019)